

STRONG OHIO

B I L L

October 2019

EXECUTIVE SUMMARY



MIKE DEWINE
GOVERNOR OF OHIO



JON HUSTED
LT. GOVERNOR OF OHIO

www.Governor.Ohio.gov



Introduction

Ohio Governor Mike DeWine's STRONG Ohio violence prevention initiative is a comprehensive plan to protect Ohio citizens and law enforcement officers from those with a propensity toward violence and to also provide help to individuals who are a danger to themselves or others.

STRONG Ohio is a plan to do something, while also protecting the constitutional rights of all Ohioans.

A number of components of Governor DeWine's STRONG Ohio plan are already underway, including work to provide wraparound services for schools and support for parents to manage children's lifetime wellness; the creation of the Ohio School Safety Center; the expansion of Ohio's statewide school safety tip line; and the development of new technology to provide more thorough, accurate background check results.

Additional elements of the STRONG Ohio plan require changes to Ohio law. Although Ohio currently has a

strong framework of laws in place, these laws must be improved to better help those who are a danger to themselves or others and to protect innocent citizens and law enforcement officers from violent individuals who are already legally prohibited from owning guns.

On October 7, 2019, Governor DeWine and Senator Matt Dolan (R-Chagrin Falls) unveiled a series of legislative proposals that will support the STRONG Ohio plan. The legislation will prevent violence, provide help, and protect constitutional rights through:

S Safety Protection Orders
T Thorough Background Checks
R Rigorous Due Process
O Ongoing Help to Those in Crisis
N New State Background Checks
G Greater Penalties for Gun Crimes



"It is time to do something, and that is exactly what we are going to do."

- Governor Mike DeWine



The STRONG Ohio bill will protect the public by helping those believed to be a danger to themselves or others due to a severe mental health condition, drug dependency, or chronic alcoholism and will develop a process to retrieve firearms from those legally prohibited from possessing them.

Current Ohio law does not go far enough to help those suffering from drug dependency or chronic alcoholism who also have a propensity toward violence. The STRONG Ohio bill will put new measures in place to proactively help these individuals before they hurt themselves or someone else. The plan will provide for rigorous due process, while also creating better mechanisms in Ohio law to ensure that those who are prohibited from owning guns do not have access to them.

1

The STRONG Ohio bill will give hospitals and courts a better ability to help those who are legally declared to be a danger to themselves or others due to drug dependency or chronic alcoholism.

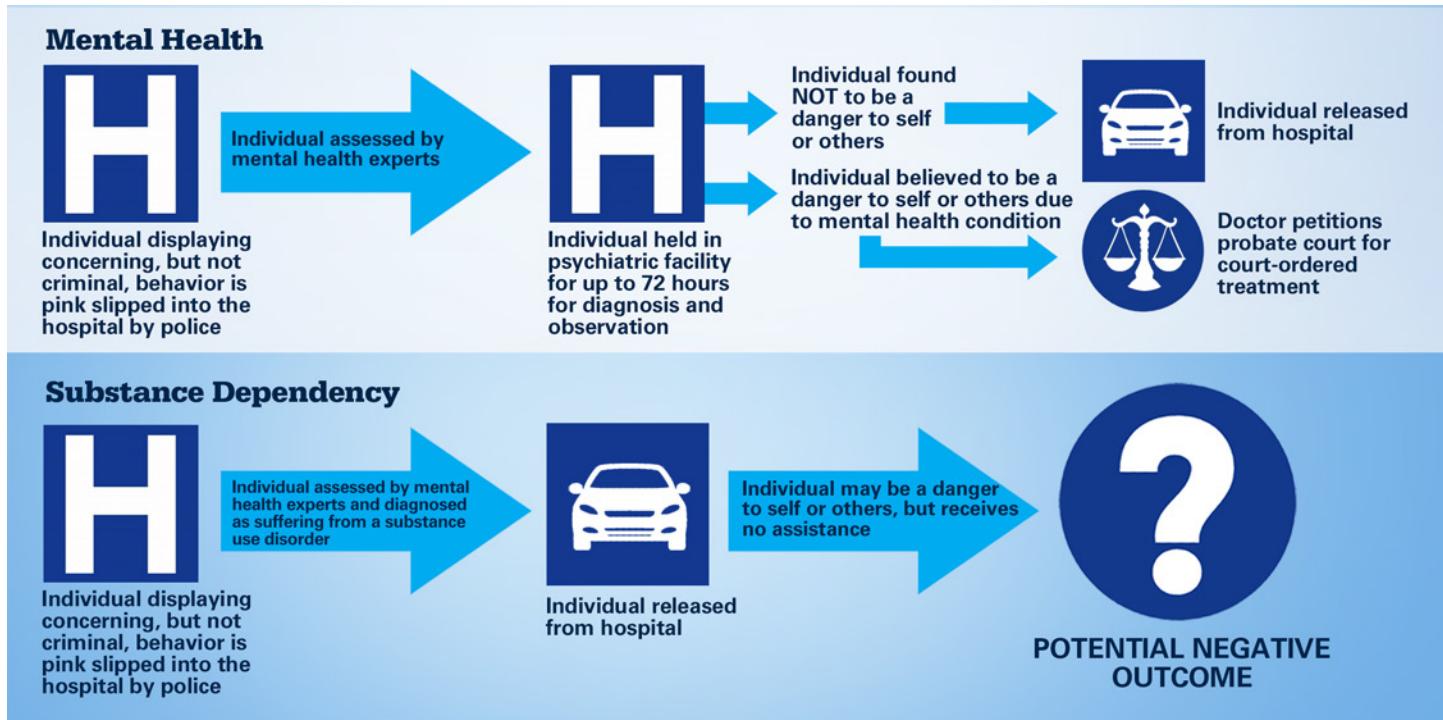
Ohio's current "pink slip" law focuses largely on providing treatment for those who are suffering from a severe mental health condition and are a danger to themselves or others, but it does not provide the same



help for those suffering from drug dependency or chronic alcoholism.¹ Doctors must release pink-slipped patients if they are diagnosed as only suffering from a substance use disorder, despite any concerns about dangerous behavior. Ohio is missing a chance to help these individuals.

¹Ohio Revised Codes 5122.10 and 5122.11

TODAY'S "PINK SLIP" PROCESS MENTAL HEALTH VS. SUBSTANCE DEPENDENCY



The STRONG Ohio bill will give doctors a better ability to fully diagnose individuals who may be a danger to themselves or others due to drug dependency or chronic alcoholism. Similar to the current process for mental health patients, the STRONG Ohio bill will authorize doctors to keep these individuals in a medical facility for observation for up to 72 hours in cases where there are safety concerns. The STRONG Ohio bill will also give doctors the ability to petition the probate court to request court-ordered treatment for those believed to be a danger to themselves or others due to drug dependency or chronic alcoholism.

By giving support to these individuals, the STRONG Ohio bill will proactively help prevent acts of violence throughout the state.

2

The STRONG Ohio bill will ensure that citizens have full due process during all probate court hearings.

Those who are suspected of being a danger to themselves or others must have the ability to fully and thoroughly defend themselves.

As currently outlined in Ohio law, judges have five days to set a probate court hearing after a doctor petitions the court with concerns about a mental health patient. During the probate hearing, the citizen has the right to fair treatment within the judicial system and full due process.²

The STRONG Ohio bill will ensure that these due process rights are also maintained during probate hearings related to drug dependency or chronic alcoholism.



DUE PROCESS RIGHTS

- Right to counsel
- Right to attend all hearings
- Right to testify
- Right to subpoena witnesses
- Right to cross-examine witnesses
- Right to appeal

3

The STRONG Ohio bill will ensure that, following full due process, those legally declared by a judge to be a danger to themselves or others do not have access to firearms.

Under state and federal law, an individual found by a judge to be "mentally ill subject to a court order" must be ordered into inpatient or outpatient treatment and placed under a weapons disability.³ A weapons disability legally prohibits the individual from owning, possessing, or purchasing a firearm.⁴ However, there is typically little to no actual enforcement of this law, and guns are rarely retrieved from individuals deemed by the court to be dangerous because of a mental illness diagnosis.

The STRONG Ohio bill will create a safety protection order process to help law enforcement safely and constitutionally enforce the weapons under disability laws that already exist. This process will ensure a safer environment for the public, as well as a safer recovery environment for those undergoing court-ordered mental health, drug dependency, or chronic alcoholism treatment.

Having Weapons While Under Disability (ORC 2923.13): ...no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance if the individual is:

- * A fugitive;
- * An adult under indictment for or convicted of a violent felony or a felony drug charge;
- * A juvenile adjudicated for certain violence/drug charges;
- * A person who is drug dependent, in danger of drug dependence, a chronic alcoholic;
- * Under adjudication for mental health concerns

Safety Protection Order Process:

In cases where there is evidence that guns are accessible to an individual deemed by a judge to be a danger to themselves or others because of a severe mental health condition, drug dependency, or chronic alcoholism, the STRONG Ohio bill will allow the probate judge to issue a safety protection order directing local law enforcement to retrieve the guns. The retrieval process will protect constitutional rights and will be conducted with a focus on law enforcement safety, depending on the type of treatment ordered by the judge.

²Ohio Revised Codes 5122.141 and 5122.15

³Ohio Revised Code 5122.15 and 18 U.S.C. 922

⁴Ohio Revised Code 2923.13

Outpatient Treatment:

Law enforcement immediately collects firearms prior to individual's release from inpatient stay.

Inpatient Treatment:

Law enforcement collects firearms during the individual's continued inpatient stay.

Individuals undergoing court-ordered treatment will also have the option to sell their firearms to a licensed firearm dealer or petition the court to allow them to turn their firearms over to a family member living in a different household.

The STRONG Ohio bill will also require that drug dependency and chronic alcoholism adjudications, in addition to mental health adjudications, are mandated for entry into the state and national background check systems to prevent individuals who are subject to a court order from purchasing a new firearm.

Once the judge declares that the individual is no longer a threat to themselves or others, current law allows the individual to petition the court for the weapons under disability restriction to be removed and for the return of all surrendered property.⁵

4

The STRONG Ohio bill will give family members of those who may be a danger to themselves or others because of drug dependency or chronic alcoholism the ability to more easily petition the probate court for court-ordered treatment.

Though rarely used, current Ohio law allows family members of those who may be a danger to themselves or others because of a serious mental health condition to directly petition the probate court via an affidavit to request that their loved one receive court-ordered treatment.⁶ A similar process for those suffering from drug dependency or chronic alcoholism also exists, although it requires proof that loved ones can afford the cost of treatment.⁷

The STRONG Ohio bill will give families of those suffering from drug dependency or chronic alcoholism the same ability to directly petition the court without first showing the ability to pay for the treatment. The STRONG Ohio bill will also mandate that the Ohio Department of Public Safety and Ohio Department of Mental Health and Addiction Services conduct outreach and raise awareness about the family-initiated petition process.



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⁵Ohio Revised Code 2923.14

⁶Ohio Revised Code 5122.11

⁷Ohio Revised Code 5119.93



The STRONG Ohio bill will enhance the state and federal background check systems to prevent those who are under a weapons disability from purchasing a firearm.

Ohio's current statutes do not require the thorough entry of information on all individuals who are under a weapons disability. This leaves the state and federal background check systems without vital information on dangerous offenders, needlessly putting the lives of law enforcement and citizens at risk. It also increases the potential for unintentional gun sales to those who are prohibited from purchasing or possessing them. The STRONG Ohio bill will enhance the background check databases by adding critical information to better ensure the accuracy of background check results.

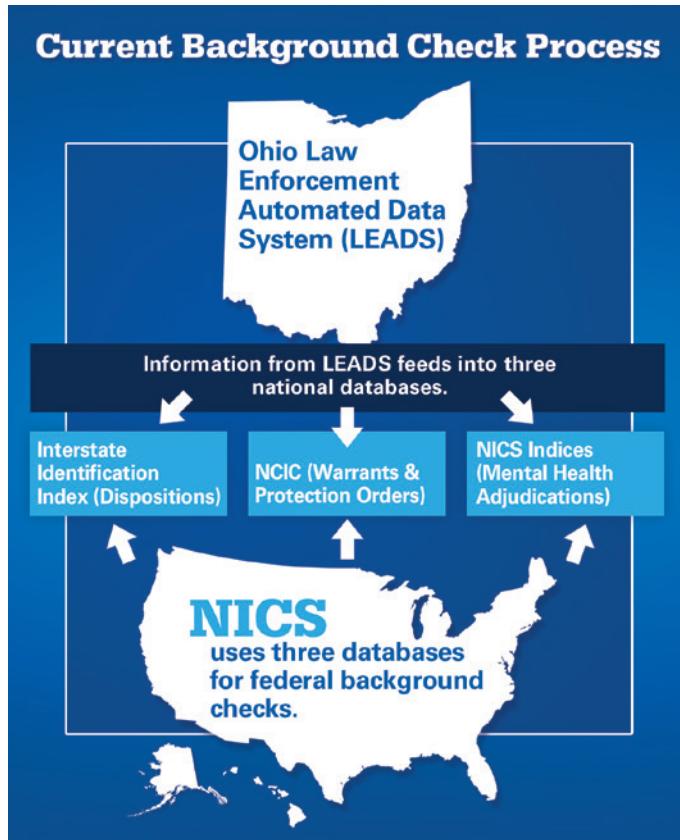
1

The STRONG Ohio bill will mandate that law enforcement agencies and courts submit information on certain protection orders and arrest warrants for serious crimes for entry into state and federal background check databases to ensure more accurate results.

When conducting a federal background check, the National Criminal Background Check System (NICS) accesses three separate databases for state-level criminal history information. More than 1,300 Ohio law enforcement agencies and courts are currently required to submit criminal case dispositions and certain mental health adjudications to the Ohio Bureau of Criminal Investigation for submission to Ohio's Law Enforcement Automated Data System (LEADS).⁸ LEADS then transfers this information to the federal Interstate Identification Index (III) and NICS Indices. Current Ohio law, however, does not require the entry of arrest warrants or protection orders for serious crimes into LEADS and the National Crime Information Center (NCIC).

"Connecting agencies to each other with timely information that would potentially stop someone who cannot legally purchase or possess a firearm will keep our communities safer."

- Chief Brandon Standley
Bellfontaine Police Department



⁸Ohio Revised Codes 5122.311, 109.57, and 109.60

The STRONG Ohio bill will ensure thorough background-check results by:

Requiring courts to submit final protection orders for entry into LEADS and NCIC for stalking, domestic violence, and sexual assault within 48 hours of issuance.

AND

Requiring law enforcement to submit information on arrest warrants for serious crimes for entry into LEADS and NCIC within 48 hours of issuance..



Aggravated Murder
Murder
Voluntary Manslaughter
Involuntary Manslaughter
Aggravated Vehicular Homicide
Felonious Assault
Aggravated Assault
Aggravated Menacing
Menacing by Stalking
Kidnapping
Abduction
Rape
Sexual Battery
Unlawful Sexual Conduct with a Minor

Gross Sexual Imposition
Pandering Obscenity Involving a Minor
Pandering Sexually Oriented Material Involving a Minor
Illegal Use of a Minor in a Nudity Oriented Material
Aggravated Arson
Arson
Terrorism
Aggravated Robbery
Robbery
Aggravated Burglary
Domestic Violence
Escape
Discharging Firearm into a Habitation
Human Trafficking

Led by Lt. Governor Jon Husted, InnovateOhio is working with the Ohio Department of Public Safety and Ohio Department of Administrative Services to develop new data-entry technology and provide it to law enforcement agencies and courts throughout the state free of charge.



"Our goal is to keep weapons out of the hands of criminals and dangerous people without infringing on the rights of law abiding citizens."

- Jon Husted, Lt. Governor of Ohio

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Although many law enforcement agencies and courts do submit arrest warrant and protection order information for entry into LEADS and NCIC, others do not, typically because the entry process is time-consuming and cumbersome.

As announced by Governor DeWine on August 28, 2019, InnovateOhio, whose mission includes using technology in government to improve services, will develop a statewide technological program to make this process more efficient. The program will help with the additional workload caused by the mandated entry of warrant and protection order information, along with the added entry of information on drug dependency and chronic alcoholism adjudications.

"These changes proposed by Governor DeWine and Lt. Governor Husted will show measurable results in keeping firearms out of the hands of criminals and the mentally ill."

- Eric Delbert, co-owner of LEPD Firearms, Range, and Training Facility in Columbus



The STRONG Ohio bill will increase the number of private-sale background checks in Ohio while also protecting the rights of law-abiding gun owners.

Guns should not be in the hands of those legally prohibited from owning them. Federal firearms dealers do not want to sell weapons to dangerous individuals, and neither do most citizens with guns for sale. Right now, however, Ohio lacks a convenient background check process for private gun sales that also protects the privacy of the majority of gun purchasers: law-abiding citizens. The STRONG Ohio bill will create a new state-level alternative to NICS that will increase the number of background checks conducted for private gun sales and decrease the number of firearms unintentionally sold to individuals who are under a weapons disability. The STRONG Ohio bill will also incentivize private sellers to require a background check before the sale.

1

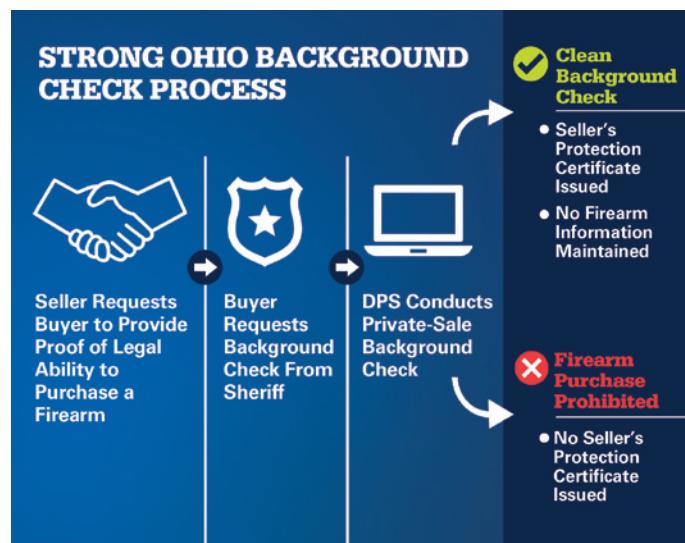
The STRONG Ohio bill will create a new, private-sale background check process that will increase the number of background checks conducted in Ohio while also protecting the privacy of law-abiding gun owners.

The three databases used by NICS for federal background checks are also accessible to the Ohio Department of Public Safety (DPS) for various law enforcement purposes. The STRONG Ohio bill will give DPS additional authority to use these databases to conduct background checks for private gun sales, thus creating a pathway for private-sale background checks to happen easily and more often. Unlike federal background checks, these private-sale background checks will not require the submission of information related to guns being purchased, and the state background check office will not store information related to the type or number of purchased firearms. The state-level background check will, however, return the same information that would have been provided by a federal background check.

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Private-Sale Background Check Process:

Ohio's 88 county sheriff's offices currently issue concealed carry licenses. The STRONG Ohio bill will expand the authority of each sheriff's office to work in partnership with DPS to conduct background checks for private gun sales upon request. This process will be an effective and efficient method to conduct meaningful background checks for potential firearms sales.



When a private seller recognizes that a background check is needed (such as in cases where the seller is not familiar with the buyer's background) the purchaser will visit their county sheriff's office for a state-level background check. This background check would instantly be conducted for a small fee.

Those whose background checks show that they are legally permitted to purchase a gun will then receive a "seller's protection certificate" from DPS. The document, paired with photo identification, can be presented to the private seller to certify that the purchaser is not prohibited from purchasing a gun. Each certificate will be valid for 90 days and can be used for multiple purchases.

In cases where the background check reveals that the purchaser is under a weapons disability, the private seller would be expected to decline the gun sale or face enhanced penalties for an illegal transaction.

2 **The STRONG Ohio bill will create a legal safe harbor for sellers who require private-sale background checks.**

As outlined on page 6, Ohio's background check system is missing critically important information needed for accurate background checks. The seller's protection certificate offered by the STRONG Ohio bill will guarantee that sellers are held harmless in circumstances where a private-sale background check shows that the buyer is free to purchase a firearm, but it is later determined that the buyer was actually under a weapons disability at the time of the sale. Private sellers who are able to provide the confirmation number from the seller's protection certificate will be immune from any criminal liability related to the sale of the gun.

The private-sale background checks offered as part of the STRONG Ohio bill will not be mandatory because background checks are not necessarily needed in all circumstances.

In sales where the seller knows with certainty that the buyer is not under a weapons disability (such as private sales between family members or a sale to a law enforcement officer) the seller could reasonably choose not to require a background check.

3

The STRONG Ohio bill will enhance penalties for those who sell or provide a firearm to someone legally prohibited from possessing a gun.

It is currently a crime in Ohio to recklessly sell or provide a firearm to someone who is legally prohibited from possessing a gun.⁹ However, it is generally a challenge for prosecutors to prove a reckless mental state because sellers currently cannot easily determine if a buyer is under a weapons disability. The STRONG Ohio bill will lower the burden of proof related to the seller's mental state, requiring the prosecutor to prove negligence instead of recklessness.

The STRONG Ohio bill's private-sale background check process will essentially eliminate the claim that the seller had no way to know of the buyer's background. Declining to require a new, private-sale background check in circumstances when the seller is not aware of the purchaser's background could, under certain circumstances, be considered negligent. To help ensure that private sellers choose to require background checks in these situations, the STRONG Ohio bill will enhance criminal penalties for those found guilty of negligently selling a firearm by increasing the charge from a felony of the fourth degree (F4) to a felony of the third degree (F3).



⁹Ohio Revised Code 2923.20



The **STRONG Ohio bill will decrease gun violence by giving local authorities better tools to hold accountable the small number of people who are typically responsible for most gun-related crimes.**

Mass shootings are horrific tragedies, but the violent crimes happening every day across Ohio are tragedies, too. Prior to the massacre in Dayton's Oregon District on August 4, 2019, there had already been 22 other gun-related homicides in Montgomery County during the year.

Overall, most street-level gun violence in Ohio is committed with handguns that are typically stolen or illegally obtained by criminals who do not have the legal right to possess firearms. Local judges and law enforcement officers who interact with criminal offenders every day know who is responsible for the majority of crime, and they know which subjects are most likely to violently re-offend. The STRONG Ohio bill will give local judges more discretion to impose longer sentences when it is likely that the offender will commit violent crimes after leaving custody. Giving local judges the power to extend the sentences of Ohio's most dangerous offenders will undoubtedly save the lives of people who would otherwise be killed.



In communities all across Ohio, a small number of people are typically responsible for most violent crime.

A 2012 Ohio State University study conducted at the direction of then-Attorney General DeWine examined decades of Ohio prison data and found that people with a history of two or more violent felony offenses (making up only 0.91% of Ohio's adult population) were responsible for 57% of Ohio's violent felony convictions.¹⁰

1 The STRONG Ohio bill will give judges a range of sentences for felony cases in which a gun was either possessed, brandished, or used.

In addition to the sentence for the underlying felony crime, current Ohio law mandates a sentence of either one or three years in prison on a gun specification, depending on how the gun was used.¹¹ The STRONG

Ohio bill will give judges the option to impose longer sentences on those who they believe are most likely to violently re-offend. This will protect the public by keeping these violent offenders off the streets for a longer period of time. Gun specification sentences are imposed regardless of whether or not the suspect committed the gun crime while under a weapons disability.

Gun Specification Sentences:



2 The STRONG Ohio bill will increase the penalty for those who are found with a gun while legally prohibited from possessing a firearm.

Under current Ohio law, an offender charged with possessing a weapon while under disability is charged with an F3 that could lead to a sentence of up to three years in prison.¹² However, because the act of simply possessing a gun while under disability is not considered a violent crime, there is no presumption of prison.¹³ As a result, these offenders are often released back into the community where they continue to possess guns and may ultimately commit more acts of violence.

¹⁰ Wilkenson, Ph.D., D. (2012). *Thirty-six years of Weapon and Serious Violent Offending in Ohio: How Data Can Inform Policy* (Final Report). Columbus, Ohio.

¹¹ Ohio Revised Codes 2941.141 and 2941.145

¹² Ohio Revised Code 2923.13

¹³ Ohio Revised Code 2923.13

The STRONG Ohio bill will increase the charge of possessing a weapon while under disability to a felony of the second degree (F2). The STRONG Ohio bill will also add the presumption of prison and give judges discretion to sentence offenders to a longer prison sentence if the subject is believed to be a serious threat to the public. Judges will retain the ability to sentence the offender to probation in cases where the judge believes there is no threat to the public.¹⁴ But, in cases where prison is appropriate, the minimum sentence under the STRONG Ohio bill will be two years. The sentencing range will increase after the offender's first weapons under disability conviction.



Having Weapons Under Disability:



3

The STRONG Ohio bill will increase the penalty for selling or providing a gun to a minor.

Under current Ohio law, the charge of selling or providing a firearm to a minor is a felony of the fifth degree (F5) with a presumption of probation.¹⁵ Because the actual act of selling or providing a gun to a minor is not a violent offense, these offenders are typically given minimal penalties.

The STRONG Ohio bill will increase this crime to an F3, create a sentencing range for judges, and remove the presumption of probation. This will give local judges the ability to incarcerate those who put guns in the hands of children, such as gang members working to recruit kids, longer.

IMPROPERLY FURNISHING FIREARMS TO A MINOR:



¹⁴ For purposes of this informational summary, "probation" and "community control" have the same meaning.

¹⁵ Ohio Revised Code 2923.21

4

The STRONG Ohio bill will increase penalties for straw purchases and for knowingly possessing a straw-purchased gun.

Under current Ohio law, the act of conducting a straw purchase (buying a gun on behalf of someone who is prohibited from purchasing a firearm) is an F3.¹⁶ Because the actual act of purchasing a gun for someone else (whether that individual is under a weapons disability or not) is not itself a violent crime, there is no presumption of prison.

The STRONG Ohio bill recognizes the fact that deceiving a federally licensed firearms dealer or private seller to purchase a gun for another individual is a serious crime that could lead to violence. The STRONG Ohio bill will increase the penalties for straw purchases through a lengthier sentencing range. If prison is found to be appropriate, the minimum sentence under the STRONG Ohio bill will be two years.

The STRONG Ohio bill will also increase penalties for knowingly possessing a straw-purchased gun. If the individual in possession of the gun is under a weapons disability, that person could also be charged with having a weapon under disability.

¹⁶ Ohio Revised Code 2923.20

UNLAWFUL TRANSACTION IN WEAPONS:



"For too long we have looked the other way while gun violence has terrorized our communities and threatened the safety of our residents. The massacre that took place in Dayton on August 4 is a tragic reminder of this fact. However, thanks to the leadership of Governor DeWine, the STRONG Ohio plan is a step in the right direction to help get dangerous weapons out of the hands of dangerous people and better protect our communities."

- Nan Whaley, Mayor of Dayton



In addition to the aforementioned legislative proposals, Governor DeWine's STRONG Ohio plan includes other initiatives to protect citizens and prevent violent crime that do not require legislative changes.

Early Intervention:

As part of the 2020-2021 biennium operating budget, the state is investing \$675 million in wraparound services for schools to design individualized programs, in conjunction with local mental health providers or social service organizations, to address the social and emotional challenges that Ohio students face.

Access to Behavioral Health Services:

The Ohio Department of Medicaid is investing \$15 million in telehealth mental health services for students so that they have access to high-quality mental health care no matter where they live.

Risk Factor and Resource Identification:

The Ohio Department of Mental Health and Addiction Services is working with communities to increase knowledge of risk factors and help parents identify warning signs of mental health conditions in children. The department will share screening tools with clinicians and help connect community-based services to link parents, families, and schools with proven supports and strategies to manage a child's wellness over the child's lifetime.

Ohio School Safety Center:

Governor DeWine created the Ohio School Safety Center (OSSC) within the Ohio Department of Public Safety to focus exclusively on enhancing the safety of Ohio schools. The OSSC is available to assist local schools and law enforcement in preventing, preparing for, and responding to threats and acts of violence (including self-harm) through a holistic, solutions-based approach to improving school safety. The OSSC also proactively scans social media and websites for threats to schools through the use of enhanced technology to identify threat language.

SaferOH Tip Line:

Governor DeWine is promoting and expanding the use of the SaferOH Tip Line through training and increased visibility to encourage more anonymous reports of

school safety concerns and threats of violence.

The SaferOH Tip Line, which accepts calls or texts to 844-SAFEROH (844-723-3764), is available free of charge to every school district, public school, and private school in Ohio. All tips are forwarded to local school officials and law enforcement.

Community Safety:

Nearly \$9 million is being provided as part of the 2020-2021 operating budget to help enhance safety at soft target locations like nonprofits and religious organizations to make their facilities more secure.

School Safety and Intervention Programs:

Working closely with Sandy Hook Promise, Ohio's schools are implementing their "Know the Signs" safety program across the state. This program equips school staff with knowledge and skills to identify potential threats of violent action and take steps to intervene.



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BILL *October 2019*

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